

Campbell, Rich

From: Rader, Cliff
Sent: Sunday, December 08, 2013 2:35 PM
To: Marshall, Tom
Cc: Rader, Cliff
Subject: Forest Service "Decision Space" excerpt from Final EIS
Attachments: rosemont-feis-vol-1.pdf

Categories: EPA

page 9 and 10 of Final EIS

Forest Service

The Forest Supervisor of the Coronado National Forest, as the lead agency responsible official for this environmental review of the MPO, determined that preparation of an EIS was required because approving the preliminary MPO could have significant impacts on the human environment (40 CFR 1500). The Coronado Forest Supervisor will consider the beneficial and adverse impacts of each alternative in determining reasonable measures to impose on the MPO for the protection of Coronado National Forest resources.

The Forest Supervisor's decision space is constrained by Forest Service regulations that govern locatable mineral activities on NFS lands (36 CFR 228 Subpart A) and related laws and regulations promulgated by other agencies. These regulations and Federal mining laws (see above) require that the Forest Service respond to parties who submit applications for approval to conduct mining operations on or otherwise use NFS lands in conjunction with mining for part or all of their planned actions. Certain proposed mining activities require submittal of a preliminary MPO. In accordance with regulations at 36 CFR 228.5, the submittal of an MPO by Rosemont Copper triggered Forest Service consideration of whether to approve the preliminary MPO or to require changes or additions deemed necessary to meet the requirements of the regulations for environmental protection set forth in 36 CFR 228.8.

The Forest Service can reasonably regulate mining activities to protect surface resources, but there are statutory and constitutional limits to its discretion when reviewing and approving an MPO. This means that the Forest Service cannot categorically prohibit mining or deny reasonable and legal mineral operations under the law.

Using the analysis in this FEIS and supporting documentation, the Forest Supervisor will make the following decisions regarding NFS lands:

1. Determine whether to approve the preliminary MPO as submitted by Rosemont Copper or another alternative considered in detail in the FEIS. The final decision may be to approve a hybrid of various components of the alternatives considered. Whichever action alternative is selected, it must minimize adverse impacts while allowing development of the mineral resource.
2. Determine whether to approve the preliminary MPO with needed changes or additions that are necessary to satisfy regulations.
3. Determine whether approval of the MPO would be consistent with the forest plan, or whether one or more amendments to the forest plan would be required.

Prior to approval of the final MPO, the Forest Supervisor will require financial assurance or a reclamation bond to ensure that NFS lands and resources involved with the mining operation are reclaimed in accordance with the approved MPO and reclamation requirements (36 CFR 228.8 and 228.13). In accordance with Forest Service policy, the operator would be required to furnish financial assurance or a reclamation bond prior to approval of a final MPO (U.S. Forest Service 2004a). Calculation of the bond amount would occur following approval of the ROD, when sufficient information is known about the decision with which to adequately perform the calculation.

Concurrent with the public release of this FEIS, the Forest Supervisor will also release a draft ROD. The draft ROD will identify changes or additions to the preliminary MPO necessary to reduce, eliminate, or compensate for adverse environmental impacts from the proposed mineral development on NFS lands, as well as any required amendments to the forest plan. This draft decision is subject to 36 CFR 218, "Project-Level Pre-decisional Administrative Review Process," and 36 CFR 251 Subpart C, "Appeal of Decisions Relating to Occupancy and Use of National Forest System Lands." Rosemont Copper may appeal the decision pursuant to 36 CFR 215 or 251 (not both); they may appeal the calculation of the bond amount under 36 CFR 251. Other parties who have provided specific written comments during either formal comment periods (Scoping and DEIS) may object to the decision pursuant to 36 CFR 218. For the forest plan amendment conducted under the 1982 planning regulations, the responsible official has elected to use the "Optional Procedures Available during the Planning Rule Transition Period" (the former 36 CFR 217 appeal procedures that were in effect before November 9, 2000, as accessed through the prior planning regulation transition provisions at 36 CFR 219.35 Appendix A, revised as of July 1, 2010).

Following resolution of objections to the draft ROD, a final ROD will be issued. Rosemont Copper will be required to modify the preliminary MPO to align with the description of the selected alternative in the final ROD and resubmit it to the Forest Service for approval, along with the required reclamation bond or other specified financial assurance. After the Forest Service has determined that the post-appeal, revised MPO is satisfactory and that the bond or financial assurance instrument is acceptable, it will notify Rosemont Copper that the MPO has been approved. Implementation of actions that affect NFS lands and resources may not commence until a final MPO is approved and bonding is in place.

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